



DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

**SATS No. KY-255-FOR; Docket ID: OSM-2012-0004;
S1D1S SS08011000 SX064A000 222S180110;
S2D2S SS08011000 SX064A000 22XS501520**

Kentucky Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; reopening of the public comment period and opportunity for public hearing on the proposed amendment.

SUMMARY: We are reopening the comment period and providing an opportunity for a public hearing on the proposed amendment to the Kentucky regulatory program (the “Kentucky program”) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The comment period is being reopened to incorporate additional statutory and regulatory provisions that were not included in the original Kentucky submittal. The revised amendment includes legislative and regulatory actions regarding electronic service of enforcement documents, clarification of Kentucky’s administrative hearings regulations, and miscellaneous minor, non-substantive changes. The amendment also includes reorganization and renumbering of the Kentucky Administrative Regulations. This document gives the times and locations that the Kentucky submittal is available for your inspection, the comment period during which you may submit written comments, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4:00 p.m., Eastern Standard Time (e.s.t.), [Insert date 30 days after the date of publication in the FEDERAL

REGISTER]. If requested, we may hold a public hearing or meeting on the amendment on [Insert date 25 days after the date of publication in the FEDERAL REGISTER]. We will accept requests to speak at a hearing until 4:00 p.m., e.s.t. on [Insert date 15 days after the date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by SATS No. KY-255-FOR, by any of the following methods:

- *Mail/Hand Delivery:* Mr. Michael Castle, Field Office Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, KY 40503.
- *Fax:* (859) 260-8410.
- *Federal eRulemaking Portal:* The amendment has been assigned Docket ID: OSM-2012-0004. If you would like to submit comments, go to <https://www.regulations.gov>. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the “Public Comment Procedures” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to review copies of the Kentucky program, this amendment, a listing of any scheduled public hearings or meetings, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSMRE's Lexington Field Office

or the full text of the program amendment is available for you to read
at <https://www.regulations.gov>.

Mr. Michael Castle, Field Office Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, KY 40503, Telephone: (859) 260-3900, Email: mcastle@osmre.gov.

In addition, you may review a copy of the amendment during regular business hours at the following location: Mr. Michael Mullins, Regulation Coordinator, Department for Natural Resources, Kentucky Energy and Environment Cabinet, 3000 Sower Boulevard, Frankfort, KY 40601, Telephone: (502) 782-6720, Email: michael.mullins@ky.gov.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Castle, Field Office Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, KY 40503, Telephone: (859) 260-3900, Email: mcastle@osmre.gov

SUPPLEMENTARY INFORMATION:

- I. Background on the Kentucky Program
- II. Description of the Proposed Amendment
- III. Public Comment Procedures
- IV. Statutory and Executive Order Reviews

I. Background on the Kentucky Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its approved State program includes, among

other things, State laws and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent with the Federal regulations. See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Kentucky program effective May 18, 1982. You can find background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Kentucky program in the May 18, 1982, **Federal Register** (47 FR 21434). You can also find later actions concerning the Kentucky program and program amendments at 30 CFR 917.11, 917.12, 917.13, 917.15, 917.16, and 917.17.

II. Description of the Proposed Amendment

Initial Submission

On January 30, 2012, Kentucky submitted a proposed program amendment (Administrative Record No. KY-1900-01) containing administrative regulations regarding electronic notification of enforcement documents and other miscellaneous changes. We published a Proposed Rule Notice in the June 12, 2012 **Federal Register** (77 FR 34888).

On October 23, 2012, we sent Kentucky an issue letter seeking clarification on language from 405 KAR 7:091. Kentucky sent us a response on November 15, 2012, informing us that it would make changes to its regulations in response to our issue letter and subsequent discussions, and then submit a revised amendment.

After determining that there were regulatory changes that Kentucky did not include in the original Kentucky submittal, we determined that we needed to reopen the public comment period so that the public could view and have the opportunity to comment on the full amendment.

We sent Kentucky a second issue letter on August 11, 2020, asking Kentucky to

describe the complete legislative and regulatory changes in the amendment and to describe the recodification of many of the provisions that occurred since the original Kentucky submittal. On October 30, 2020, Kentucky sent us a response that provided the requested information.

Below is a summary of Kentucky's proposed changes. We have listed the changes according to their final regulatory section numbering. If the original regulatory section numbering differs we have listed it in parenthesis. The full text of the amendment is available for you to read at the locations listed above under **ADDRESSES** or at www.regulations.gov.

A. Reorganization of Administrative Hearing Regulations

Kentucky proposes to merge its regulations on administrative hearings for surface mining with its general administrative hearing regulations. Kentucky would merge the regulations by removing the regulations at 405 KAR 7:091 and recodifying them at 400 KAR 1:090 and 110. Kentucky would also remove the regulations at 405 KAR 7:092 and recodify them at 400 KAR 1:110.

The merger would include many non-substantive changes to the numbering, format, and language of the regulations. We will not describe the non-substantive changes in this notice. The full text of the proposed amendment is available at the locations listed above under **ADDRESSES** or at www.regulations.gov.

B. Electronic Service of Notice of Noncompliance

1. KRS 350.130

Kentucky proposes to revise this subchapter to provide for electronic delivery of notice of noncompliance and to require an electronic registered receipt for Kentucky to consider the delivery effective.

2. *405 KAR 12:020*

Kentucky proposes to revise this subchapter to provide for electronic delivery of notice of noncompliance, order for remedial measures, order for cessation and immediate compliance, and notice of inspection of noncompliance.

3. *405 KAR 1:090 (originally 405 KAR 7:091)*

Kentucky proposes to merge 405 KAR 7:091 Section 7 with 405 KAR 1:110 and add provisions to allow the filing of a pleading by electronic mail.

4. *405 KAR 1:110 (originally 405 KAR 7:091)*

Kentucky proposes to merge 405 KAR 7:091 Section 5 with 405 KAR 1:110 Section 3, and add provisions that would allow the electronic service of proposed penalty assessments, notices of assessment conference, notices of administrative hearings, administrative summonses, and other documents.

C. Miscellaneous Changes

1. *400 KAR 1:090 (originally 405 KAR 7:091)*

In merging 405 KAR 7:091 Section 1 to 400 KAR 1:090 Section 1, Kentucky proposes to remove provisions on public participation during the review of determinations concerning surface mining permits, notices of noncompliance, orders for cessation, performance bond amount, orders to abate, and other matters appropriate for adjudication by the Kentucky Energy and Environment Cabinet (the Cabinet).

Kentucky proposes to rescind a proposed change from its original amendment submission. In our proposed rule notice published on June 12, 2012 (Admin. Record No. KY-1900-3), we wrote that Kentucky proposed to add the phrase “that is not the result of a

lack of diligence on the part of the corporate party or its counsel” at 405 KAR 7:091

Section 2(1)(a). Kentucky has withdrawn that change, and the original language will carry over to the sub-paragraph’s new location at 400 KAR 1:090 Section 10. Kentucky also proposes non-substantive changes for clarity. The new sub-paragraph will read “The failure of the corporation or limited liability company to appear by counsel, without good cause, shall be grounds for default.”

Kentucky proposes to merge 405 KAR 7:091 Section 6 to 400 KAR 1:090 Section 5 and to remove the requirement for notices of administrative hearings to be mailed to intervenors, posted at a regional office, and published in a local newspaper.

2. 400 KAR 1:110 (originally 405 KAR 7:092)

Kentucky proposes to move 405 KAR 7:092 Section 4 to 400 KAR 1:110 Section 4 and to remove the 30-day time limit for a recipient of a notice of penalty assessment to request an assessment conference.

Kentucky proposes to move 405 KAR 7:092 Section 6 to 400 KAR 1:110 Section 6 and to remove the requirement for petitions of penalty assessments to include full payment of the proposed penalty assessment.

3. 400 KAR 1:110

Kentucky proposes to add two new sections to 400 KAR 1:110. Section 13 would govern the location of administrative hearings and Section 14 would govern judicial review and remand of final orders from the Secretary of the Cabinet.

4. 405 KAR 12:020

Kentucky proposes to change 405 KAR 12:020 Section 2(5) by adding language to specify examples of good cause for modifying remedial measures, including correction

of errors, changes in responsible parties, changes to remedial measures, and changes in abatement dates.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

Electronic or Written Comments

If you submit written or electronic comments on the proposed rule during the 30-day comment period, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent State or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed (see **ADDRESSES**) will be included in the docket for this rulemaking and considered.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying

information from public review, we cannot guarantee that we will be able to do so.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., e.s.t. on [Insert date 15 days after date of publication in the FEDERAL REGISTER]. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Statutory Orders and Executive Reviews

Executive Order 12866—Regulatory Planning and Review and Executive Order 13563—Improving Regulation and Regulatory Review

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB) will review all significant rules. Pursuant to OMB guidance, dated October 12, 1993, the approval of State program amendments is exempted from OMB review under Executive Order 12866. Executive Order 13563, which reaffirms and supplements Executive Order 12866, retains this exemption.

Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSMRE for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the **Federal Register** indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR part 917

Intergovernmental relations, Surface mining, Underground mining.

Thomas D. Shope, Regional Director
North Atlantic - Appalachian Region

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